IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Tikamchand Vs. State of Rajasthan and Anr.

S.B.Criminal Revision No. 122/04 against the order dated 24.1.2004 passed by Judicial Magistrate, Ist Class No.1, Sujangarh, Churu in Criminal Misc. Case No.144/02.

Date of order : 04/1/2005

P R E S E N T

HON'BLE MR.H.R.PANWAR, J.

Mr. Ramesh Guleria for the petitioner
Mr. J.P.S.Choudhary Public Prosecutor for the State.
Mr. M.P.Pareek for the respondent No.2.

BY THE COURT

REPORTABLE

By this criminal revision petition under Section 397 r/w 401 Cr.P.C., the petitioner has challenged the order dated 24.1.2004 passed by Judicial Magistrate, Ist Class, No.1, Sujangarh, District Churu (for short 'the trial court') whereby the trial court took cognizance of the offences punishable under Sections 454 and 380 IPC against the petitioner and issued process.

Heard learned counsel for the petitioner and the public prosecutor as also the counsel appearing for the respondent No.2.

A complaint was filed by the respondent No.2 against the petitioner which was sent to the police for investigation u/s 156 (3) Cr.P.C. The police filed final negative report solely on the ground that the matter is of civil nature. The protest petition was filed by the complainant respondent No.2. CW-1 Champalal, the complainant and two other witnesses viz. C.W.2 Malchand and C.W.-3 Champa were examined as complainant's witnesses. The trial court, on perusal of the material placed before it, came to the conclusion that there is a prima facie case to proceed against the petitioner for the offences noticed above and took the cognizance of the offence and issued the process.

Aggrieved by order impugned taking cognizance and issue of process, the accused petitioner filed the instant revision.

It has been contended by the learned counsel for the petitioner that the dispute is of a civil nature and as such the criminal proceedings should not be allowed.

In a catena of decisions, the Hon'ble Supreme Court held that apart from civil remedy if the criminal act is established, then the criminal proceeding cannot be quashed on the ground that simultaneously a civil proceeding can also be initiated.

The Hon'ble Apex Court, in State of Haryana Vs. Bhajan Lal, 1992 (Suppl.) 1 SCC 335, has held that quashing of FIR or a complaint, in exercise of inherent powers of the High

Court, should be limited to very extreme exceptions. Same view has been reiterated in Rajesh Bajaj Vs. State NCT of Delhi, (1999) 3 SCC 259, wherein the Hon'ble Apex Court held that merely because an act has a civil profile, is not sufficient to denude it of its criminal outfit. The Court further observed as under:-

> "It may be that the facts narrated in the present complaint would as well reveal a commercial transaction or money transaction. But that is hardly a reason for holding that the offence of cheating would elude from such a transaction. In fact, many a cheatings were committed in the course of commercial and also money transactions."

In Trisuns Chemicals Industry Vs. Rajesh Agarwal & ors., 1999 Cr.L.R.(SC) 677, the Hon'ble Supreme Court held that merely because dispute is of civil nature and Magistrate had no jurisdiction to take cognizance, the same cannot be a sufficient ground for quashing the FIR, particularly when act Prima facie constitutes an offence. The Hon'ble Supreme Court held as under:-

> "We are unable to appreciate the reasoning that the provision incorporated in the agreement for referring the disputes to arbitration is an effective substitute for a criminal prosecution when the disputed act is an offence. Arbitration is a remedy for affording reliefs to the party affected by breach of the agreement but the arbitrator cannot conduct a trial of any act which amounted to an offence albeit the same act may be connected with the discharge of any function under the agreement. Hence, those are not good reasons for the High Court to axe down the complaint at the threshold itself. The investigating agency should have had the freedom to go into the whole gamut of the allegations and to reach a conclusion of its own.

> Preemption of such investigation would be justified only in very extreme cases."

In Vitoori Pradeep Kumar Vs. Kaisula Dharamaiah & ors., (2002) 9 SCC 581, the Hon'ble Supreme Court held that the so-called civil suit is a suit for specific performance. We see no justification on the part of the High Court under such circumstances to direct that the criminal proceedings should be quashed.

In Lalmuni Devi (Smt.) Vs. State of Bihar & ors., (2001) 2 SCC 17, the Hon'ble Supreme Court held as under:-

> "It is true that if the complaint does not make out an offence it can be quashed. However, it is also settled law that facts may give rise to a civil claim and also amount to an offence. Merely because a civil claim is maintainable does not mean that the criminal complaint cannot be maintained. In this case, on the facts, it cannot be stated, at this prima facie stage, that this is a frivolous complaint. The High Court does not state that on facts, no offence is made out. If that be so, then merely on the ground that it was a civil wrong the criminal prosecution could not have been quashed."

In Alpic Finance Ltd. Vs. P. Sadasivan & Anr., (2001) 3 SCC 513, the Hon'ble Supreme Court held that merely because remedy by way of civil suit is available, is not an impediment in maintaining a criminal complaint provided the complaint discloses the ingredients of the offence alleged. The Apex Court further observed that in transaction involving passing of valuable properties between the parties, the aggrieved party may sue for damages and also

file a complaint against the wrongdoer for criminal breach of trust or cheating, but the complaint must disclose essential ingredients of the offence.

In M. Krishnan Vs. Vijay Singh & Anr., (2001) 8 SCC 645, the Hon'ble Supreme Court observed that mere pendency of the civil suit between the parties cannot be a ground for quashing the criminal proceedings against the accused. The Apex Court observed that if mere pendency of a suit is made a ground for quashing the criminal proceedings, the unscrupulous litigants, apprehending criminal action against them, would be encouraged to frustrate the course of justice and law by filing suits with respect to the documents intended to be used against them after the initiation of criminal proceedings or in anticipation of such proceedings and such a course cannot be the mandate of law. The Apex Court further held that in a criminal court, the allegations made in the complaint have to be established independently, notwithstanding the adjudication by a civil court. The Apex Court further held as under:-

> “Where factual foundations for the offence have been laid down in the complaint, the High Court should not hasten to quash criminal proceedings merely on the premise that one or two ingredients have not been stated with the details or that the facts narrated reveal the existence of commercial or money transaction between the parties. The revisional or inherent powers for quashing the proceedings at the initial stage can be exercised only where the allegations made in the complaint or the first information report do not prima facie disclose the commission of an offence or

> the allegations are so absurd or inherently improper that on the basis of which no prudent person could have reached a just conclusion that there were sufficient grounds in proceeding against the accused or where there is an express legal bar engrafted in any provisions of the Code or any other statute to the institution and continuance of the criminal proceedings or where a criminal proceeding is manifestly actuated with mala fide and has been initiated maliciously with the ulterior motive for wrecking vengeance on the accused and with a view to spite him due to private and personal grudge."

In the recent judgment in Jagdish Ram Vs. State of Rajasthan reported in AIR 2004 S.C. 1734, the Apex Court laid down that the principles required to be kept in mind at the stage of taking cognizance and reaching a prima-facie view and held that at the stage the Magistrate had only to decide whether sufficient ground exists or not for further proceeding in the matter. It is well settled that notwithstanding the opinion of the police, a Magistrate is empowered to take cognizance if the material on record makes out a case for the said purpose. The investigation is the exclusive domain of the police. Taking of cognizance of the offence is an area exclusively within the domain of a Magistrate. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding, and not whether there is a sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction can be determined at the time of conclusion of

the trial and not at the stage of inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons.

In the instant case, the respondent No.2 filed the complaint before the learned trial court stating therein that accused-petitioner Tikam Chand and co-accused Rameshwar Lal are his real brothers; a partition of the ancestral house took place and all the three brothers took possession over the portion which came to their share and started using the same. It has been alleged that the complainant-respondent No.2 constructed one room, Kitchen etc. on the portion of land which came to his share. Thereafter he went to Hanumangarh for earning his livelihood. It has been stated that his aforesaid two brothers were harbouring ill-will against him and taking advantage of his absence from the village, they broke the locks and took away ornament, slabs, iron-tain, clothes and other domestic articles. The complaint was sent to the police for investigation under Section 156 (3) Cr.P.C. After investigation, the police filed negative final report. The complainant filed a protest petition and stated that the investigating officer has not conducted the investigation in an impartial manner and the statement of witnesses has not been recorded as stated by the witnesses. It has further been stated that the alleged

Will is forged and fabricated as Late Surja Ram had no right to execute such a Will. He examined himself as CW-1 and produced CW-2 Mal Chand and CW-3 Champa on oath. The learned trial court, vide order dated 24.1.2004 allowed the present petition and rejected the negative final report filed by the police.

The essential ingredients of the offence under Section 454 IPC are : whoever commits house-breaking by entering into a house in possession of a person and used for human dwelling in order to committing an offence punishable with imprisonment of either description for a term which may extend to three years and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to ten years. In the instant case, prima-facie there is evidence on record that the petitioner entered in the house of the complainant by breaking the house after the Sun-set and before the Sun-rise to commit an offence of theft and committed the theft of the articles belonging to the complainant from the house which has been used by the complainant as a human dwelling and, therefore, prima-facie, the essential ingredients of the offences punishable under Sections 454 and 380 IPC are made out.

From the statement of witnesses produced by the complainant, complainant CW-1 Champa Lal, CW-2 Maal Chand and CW-3 Champa, it prima-facie appears that on being partition, the dwelling house in question came in the share of the complainant and at the relevant time, the complainant was in the ownership and exclusive possession thereof, as stated by these witnesses.

In this view of the matter, the trial court was therefore, justified in taking cognizance of these offences against the petitioner. The order impugned does not suffer from any error, illegality or perversity which may warrant interference by this Court. The revision petition lacks merit and is dismissed accordingly. Stay petition also stands dismissed.

(H.R.PANWAR),J.

RP